IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.5618 of 2005
Date of Decision: 15.09.2006

Jagdish ...Petitioner

Vs.

Brij Lal ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Rajinder Goel, Advocate,
for the petitioner.

Vinod K.Sharma, J. (Oral)

This revision petition has been filed against the order dated 27.9.2005 passed by the learned Additional District Judge, Kaithal directing the parties to fix advalorem court fee as the suit was for possession and relief of mandatory injunction could not be granted in the suit.

Learned counsel for the petitioner placed reliance on the judgment of Hon'ble High Court of Rajasthan in **Puran Mal Modi Vs. Rajasthan Investors Pvt. Ltd. 2005 (2) RCR (Civil) 490** to contend that after revocation of licence an owner is entitled to seek possession by way of mandatory injunction and the court fee would be as required in the case of suit for mandatory injunction. Paras No.7and 8 of the said judgment read as under:-

"7. Since the Hon'ble Supreme Court has very categorically held that suit for mandatory injunction was maintainable, as such, as to what is the Court fee to be paid will also be covered by the nature of the suit which is in the instant case a suit for mandatory injunction, and as such, the court fee which has been paid treating the suit as a suit for mandatory injunction is in accordance with law and no fault can be found with same. It may also be stated here that question relating to insufficiency of the court fee cannot be allowed to be raised by the defendant which is settled proposition of law as laid down by their Lordships of the Supreme Court in **Sri Rathpavarmaraja v. Smt.Vimla reported in AIR 1961 SC 1299** and by the learned Single Judge of this Court in the case of **Khema and others Vs. Shri Bhagwan and others reported in 1994 (2) RLW 14.**

8. It may also be stated here that the learned counsel for the respondent has also cited the case of **Prabirendra Nath Nanday and another V. Narendra Nath Nanday reported in AIR 1958 Calcutta 179** where learned Single Judge of Calcutta High Court has held that a suit by owner against licence for mandatory injunction directing him to vacate premises on termination of licence is maintaiable. A similar view has been taken by Allahabad High Court in the case of **Ajab Singh V. Shital Puri (deceased by Lrs) reported in AIR 1993 Allahabad** 138 wherein the Allahabad High Court has held that after the termination of the licence, a suit by the

owner for restoration of possession was maintainable and the Court fee to be paid would be that which is applicable to a suit for injunction and not one which is applicable in the case for suit for possession. The learned Judge of the Allahabad High Court in Ajab Singh's case supra relied upon the judgment of their Lordships in the case of Sant Lal (supra)."

In view of the law laid down in the above authority, this revision petition is allowed and the impugned order is set aside.

(Vinod K.Sharma)
Judge

15.09.2006
rp